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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,172	12/02/2003	Roger H. Hamilton	998_001CIP	4133

20874 7590 12/10/2007
MARJAMA MULDOON BLASIAK & SULLIVAN LLP
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SUITE 300
SYRACUSE, NY 13202

EXAMINER

YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3636

MAIL DATE	DELIVERY MODE
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12/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Interview Summary

Application No.

10/726,172

Applicant(s)

HAMILTON ET AL.

Examiner

Winnie Yip

Art Unit

3636

All participants (applicant, applicant's representative, PTO personnel):

(1) Winnie Yip.

(3) _____.

(2) Mr. Bilinski.

(4) _____.

Date of Interview: 06 December 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: _____.

Claim(s) discussed: Proposed claims 1, 8-17.

Identification of prior art discussed: Locarno '001 and Lucia '716.


Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

The proposed claims 1, 8-17 have been discussed. Applicant attempts to claim a container in combination with an oxygen bottle, if so the term "adapted" in claim 1 should be changed to "maintaining". The combination may overcome the rejection under 35 USC 102 to Lucia. However, in order to overcome the 103 rejection, combining the subject matters of claims 1 and 14 or 9 and a persuasive argument is strongly suggested. However, these may raise a new issue, so further search is required. A final decision will be based upon applicant's formal response.

In addition, the proposed claims 13 and 15 include a term "said upper bottle retaining portion" which lacks a proper antecedent basis since the term is cancelled from the proposed claim 1. And, the numeral number "150" in the drawing Figs. 5-6 is not described in the specification. Correction is required.

mg

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*Do not enter
for interview
12/6/07*

Date:	December 6, 2007	Time:	10:30 a.m. +-	No. of Pages Transmitted:	_____
				(Including this Cover Letter)	
Name	Company / Location	Fax Number	Phone Number		
Winnie S. Yip, Examiner	USPTO Art Unit 3636	571.273.6870	571.273.6870		

Comments:

Appln No.: 10/726,172
 Applicant: Roger Hamilton et al.
 Filed: December 2, 2003
 Art Unit: 3636
 Examiner: Winnie S. Yip
 Docket No.: 3027983US02
 Confirmation No. 4133
 Customer No: 72742
 Title: APPARATUS FOR CONTAINING AND CENTERING OXYGEN BOTTLE
 ON A WALKER

Please see the attached DRAFT – For Discussion Purposes Only Response to Final Office Action for the telephone interview scheduled with Mr. Bilinski, rescheduled for 3:00 p.m. today, December 6, 2007. If this time is not convenient, please contact our office for rescheduling.

Thank you.

Ana McCormick

Client/Matter Number	Time Keeper Number
3027983 US02	3567

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December 6, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/726,172
Applicant : Roger Hamilton et al.
Filed : December 2, 2003
Art Unit : 3636
Examiner : Winnie S. Yip
Docket No. : 3027983 US02
Confirmation No.: 4133
Customer No. : 72742
Title : APPARATUS FOR CONTAINING AND CENTERING OXYGEN
BOTTLE ON A WALKER

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO FINAL OFFICE ACTION

Sir:

In response to the final Office Action, dated September 19, 2007, please amend the above-identified patent application, without prejudice, as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

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Application No.: 10/726,172
Amendment Dated December 4, 2007
Final Office Action Dated September 19, 2007
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Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the above-captioned patent application:

LISTING OF CLAIMS

1. (Currently Amended) A ~~carrier for retaining an oxygen bottle, said carrier~~ ^{maintaining} comprising a flexible open-top container ~~adapted for maintaining~~ a close fitting relationship with an oxygen bottle placed therein, said oxygen bottle comprising a substantially cylindrical housing including at least one regulator and gauge extending from an upper portion of said housing, said container including:

a sleeve portion that retains said oxygen bottle;

a peripheral mouth portion; and

including an internal rigid plastic peripheral section directly adjacent said mouth portion that maintains a predetermined shape and size and provides stiffness to said mouth portion and wherein said mouth portion is sized to permit ingress of the substantially cylindrical housing of an said oxygen bottle, thereby enabling an said oxygen bottle to be loaded therein into the container vertically by one person loading said bottle, said at least one regulator and gauge extending outwardly therefrom and wherein said peripheral mouth portion is made from a flexible material and includes closure means

a flexible upper bottle retaining portion adapted for preventing a said retained oxygen bottle from falling out of said carrier.

2. (Canceled).

3. (Canceled).

4. (Canceled).

5. (Canceled).

6. (Canceled).

7. (Canceled).

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8. (Original) A carrier as recited in Claim 1, including means for retaining personal items of a person using said carrier.

9. (Original) A carrier as recited in Claim 8, wherein said personal item retaining means includes at least one basket attached to said container.

10. (Previously Presented) A carrier as recited in Claim 9, wherein at least one said basket is releasably attached.

11. (Canceled).

12. (Canceled).

13. (Previously Presented) A carrier as recited in Claim 1, wherein said upper bottle retaining portion includes a drawstring to selectively reduce the diameter of said portion, said upper bottle retaining portion being disposed above said peripheral mouth portion. NA

14. (Previously Presented) A carrier as recited in Claim 1, including a pair of upper strap ends extending from respective sides of the upper bottle retaining portion of said container, said pair of upper strap ends including a snap-fitting buckle portion at one strap end of each of said pair, wherein the other strap end of said upper strap pair is adapted to be looped around a portion of an upper support portion of an orthopedic appliance and is attached to the other of said upper strap end pair via an adjustable and releasable buckle connection; and

a pair of lower straps, each of said lower straps including an attached elongated hook or loop pad, and a strap end extending from opposite sides of the lower portion of said flexible open-top container, each of said strap ends including a hook or loop fastener wherein each of said lower straps is adapted to be selectively looped around a lower support portion of an orthopedic appliance and fastened upon itself using said strap end and said hook or loop pad attached to said lower strap, said pairs of upper strap ends and said pair of lower straps enabling said flexible open-top container to be selectively adjustable both laterally and vertically when attached to an orthopedic appliance.

15. (Previously Presented) A carrier as recited in Claim 1, wherein said upper bottle retaining portion includes a drawstring to selectively reduce the diameter of said portion. NA

16. (Previously Presented) A carrier as recited in Claim 14, wherein said carrier can be selectively attachable to at least one orthopedic appliance, including at least one of a wheelchair and a walker.

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REMARKS

The above-captioned patent application has been carefully reviewed in light of the final Office Action to which this Amendment is responsive. Claim 1 has again been amended in an effort to more clearly and definitively recite that which is regarded as the invention. To that end, no new matter has been added.

Presently, Claims 1, 8-10 and 13-17 are pending in the above-captioned patent application. Claims 1, 8 and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lucia, III et al. (U.S. Patent No. 5,951,716), while Claims 1, 8 and 13-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Locarno (U.S. Patent No. 5,288,001) in view of Conte '531 and Lucia, III et al.

Applicant gratefully acknowledges the allowability of Claims 9-10 over the prior art of record.

Turning to the prior art rejections and in order to anticipate under the Statute, each and every claimed limitation must be found in the single cited reference. Those limitations that are not found must be notoriously well known in the field to one of ordinary skill in the art.

The Examiner has broadly interpreted the Lucia reference, which as previously noted relates to a containment bag used specifically for purposes of home dryer dry cleaning. This containment bag is defined by a woven or knit fabric bag having an interior that is pretreated with a cleaning composition. As such, a garment can be stored within the bag and subsequently be cleaned while in the home dryer. The bag 2 is defined by a large open top, shown in Figs. 1 and 2, that can include a form of closure means such as sealing strips (Fig. 1) or others as described in col 3, lines 50-65, including, for example, a twist-tie 4, as shown in Fig. 2 to close the opening. In addition to the foregoing, the containment bag 2 can also include a set of stiffening rings 7 and 8, see col 5, lines 8-16, and Fig. 2, which according to the description can be used for retaining the flexible support structure in a fixed position with respect to the containment bag 1. These flexible stiffening rings 7 and 8 are useful as aiding in the support of the shape of the containment bag 1." (col 5, lines 13-15). As is evident from the drawings, the flexible rings 7 and 8 are defined on the major portion of the containment bag with one ring 7

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being disposed fairly close to the top of the bag and the other ring 8 being fairly close to the bottom of the bag, see Fig. 2.

The present container is specifically used to contain an oxygen bottle. The oxygen bottle is generally defined by a substantially cylindrical configuration or housing and includes controls at the top for the regulation of oxygen that is contained therein. Oxygen bottles for use with individuals that require assistance with breathing are cumbersome and awkward to handle given their weight and configuration. To that end, a problem that is confronted by patients, users and caregivers alike is the ability to load such awkward articles while simultaneously handling a carrier that is configured to retain said bottle in order to direct the bottle and actually load the bottle therein. In the instance of unsupported carriers that are already known in the field, such as Locarno, an oxygen bottle can only be loaded by an individual by laying the carrier in a horizontal attitude on a floor or a table and then cinching the bottle into the carrier, in a manner analogous to putting on a sock. Even in the instance in which a carrier were supportable, such as Locarno, the bottle would still have to be loaded into the carrier first in the manner just described and then the carrier could be attached by straps to the wheel chair. Otherwise, attempting to load the bottle into the carrier vertically would require several individuals to retain the bottle and then align and guide the bottle into the interior of the carrier.

Turning back to the present 102 rejection and if one were to attempt to use the Lucia III containment bag to load an oxygen bottle vertically, it would not be possible by one person without a second person holding open the open end of the containment bag. In addition, it is not believed that this containment bag would be capable of permitting the regulating elements of the bottle to extend outwardly from the container as would be needed for a person using the bottle. Moreover, such a container would not permit stable retention of an oxygen bottle, as the bottle would be freely movable within such a container and not snugly retained within a sleeve portion.

Applicant has now amended Claim 1 to more clearly point out the essential differences between this prior art reference and by now structurally reciting the oxygen bottle within the claim. Support for the foregoing amendments are found in the above-captioned application – see for example, paragraph [0027] and Figs. 5-7. Therefore, it is believed no new matter has been added. Because Lucia fails to include essential features that are now positively recited in Claim 1, there can be no anticipation under the Statute. Claims 8 and 13 are believed allowable for the

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same reasons since these claims depend from amended Claim 1. Reconsideration is respectfully requested.

As to the obviousness rejection, Applicant also respectfully traverses this rejection based on amended Claim 1. In order to successfully maintain a "*prima facie*" obviousness rejection under the Statute, each and every claimed limitation must be found in or suggested by the prior art, whether singly or in combination. Those limitations that are not found or suggested must be notoriously well known in the field of the invention to one of ordinary skill. To that end, there must be a reason in the field to make the purported combination. That is, the combination cannot be the result of impermissible hindsight (i.e., advance knowledge) of the invention. Each and every reference therefore should not be read in a piecemeal fashion so as to simply reconstruct the claimed structure.

Turning to the cited art and as alluded to previously, Locarno relates to a carrier that retains an oxygen bottle, the carrier being attached to a wheelchair. This cited carrier includes an open-top pouch 2 that retains the oxygen bottle 8 as well as straps that enable the carrier to be attached to the wheel chair with certain amount of adjustment being possible for the carrier once attached to the wheelchair. The carrier is clearly shown in Fig. 1. This reference, as noted above, is not capable of retaining an oxygen bottle without first removing the carrier from the wheel chair and then cinching the cylindrical oxygen bottle into the open top pouch with the pouch being laid substantially horizontally. Conte does not seem to include the above features that are missing from Locarno. This secondary reference appears to be cited by the Examiner only for reasons having to do with the strap features that are presently recited in Claim 14. As such, it is not believed this reference in combination with Locarno can include all of the features presently recited according to amended Claim 1. Lucia, III has also been discussed *infra*. As noted above, this secondary reference fails to describe a container that will snugly retain an oxygen bottle of substantially cylindrical configuration and permit the extension therefrom of the regulating and gauge elements of the bottle in that the bottle of Lucia, III requires complete closure in order to properly function. That is, this bag is used as a containment bag for home dryer purposes and is not used for retaining an oxygen bottle. Finally, this reference also is incapable of permitting an oxygen bottle of the above construction to be loaded vertically into the container using one person.

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In combination, the cited references do not produce the invention of amended Claim 1. The Examiner believes that the stiffening rings of Lucia III can be added to the peripheral mouth of Locarno to produce the present invention. Such a combination is not taught by the references and providing such a combination would be available only through hindsight of the present invention. Additionally, Applicant does not agree that the straps of Locarno form stiffening rings for purposes of providing a reinforced mouth portion capable of providing stiffness in the manner of the present invention to load an oxygen bottom vertically using a single person. Please note that the straps are provided as reinforcement on each of the top and bottom of the pouch. No mention or suggestion is made regarding these straps or their purpose on the pouch and absent the present invention it is believed one would not have consulted Locarno for that feature, even if arguably such a purpose were feasible. As noted, the stiffening rings of Lucia, III are provided in the interior of the bag and not at the peripheral mouth portion itself.

The remaining cited references do not provide or suggest these missing features, as are now presently claimed in amended Claim 1 and therefore a "*prima facie*" obviousness rejection cannot be made. That is, Conte relates to

In summary and in view of the above amendment, Applicant believes the above-captioned application is now in a condition for allowance and an expedited Notice of Allowability is earnestly solicited.

If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number listed below.

It is believed no fee is required for the filing of this response. However, in the event that any additional fees are required, the Director is hereby authorized to charge Deposit Account No. 50-3010 for any additional fees and to charge any overpayments thereto.

Respectfully submitted,

HISCOCK & BARCLAY, LLP

Date: _____

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17. (Previously Presented) A carrier as recited in Claim 14, wherein said carrier is attachable to a wheelchair.

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